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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,523	03/21/2001	Abraham Lorber	LUZZATTO 3.0-082	3557
7590 01/23/2004 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK, LLP 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090-1497			EXAMINER COLE, MONIQUE T	
			ART UNIT 1743	PAPER NUMBER

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/813,523	Applicant(s) LORBER ET AL.
Examiner Monique T. Cole	Art Unit 1743

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the minimum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 4-10 and 21 is/are allowed.
- 6) ☒ Claim(s) 11-14 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 15, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I file 10/27/2003 is acknowledged. The traversal is on the ground(s) that Group II is no longer distinct from Group I because Group II has been amended to depend from claim 1 & that Groups I & III are not distinct. This has been found persuasive and the previous restriction requirement has been withdrawn.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 18 recites the limitation "the permanent memory" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 11, 12, 13, 14, 16, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 5,109,691 to Corrigan et al. (herein referred to as "Corrigan").

Corrigan discloses a screening system for the detection of explosives or other controlled substances that comprises an ion mobility spectrometer 236 (col. 18, lines 21-22) and a computer 302. The analysis of the target material consists of identifying the materials and determining the amounts present (col. 18, lines 10-12). The result is presented to the user in usable form. The subject or target materials may be present in varying amounts in the environment of the system and therefore, the system must be capable of distinguishing between background levels and alarm levels (col. 18, line 65-col. 19, line 3). Impliedly, the computer measures the amount of the target materials and relates them to some indicator of acceptable levels (diagnostic response (i.e., safe or alarm)). The entire system is under the control of a stored program digital computer that is responsible for process control, data acquisition, data analysis and display of results (col. 20, lines 20-25). It is the Examiner's position that the computer disclosed in Corrigan meets the requirements of the first and second elaborator means, buffer memory means and means.

Corrigan differs from the instantly claimed invention in that it does not disclose that the apparatus is for the determination of the amounts of biogenic amines in a sample. However, Corrigan clearly states that the system provides a high degree of versatility in that by changing the

programming of the computer, a wide range of materials which have differing physical and chemical properties can be detected (col. 5, lines 20-24). Thus, it would have been obvious to one of ordinary skill in the art to modify the invention of Corrigan to detect such chemical compounds as biogenic amines since it has been taught that ion mobility spectrometer/computer system is capable of doing so in a fast, reliable and non-invasive manner (col. 5, lines 33-35).

Allowable Subject Matter

6. Claims 1, 2, 4-10 & 21 are allowed.
7. Claims 15 & 19-20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is an examiner's statement of reasons for allowance: the prior art does not teach or suggest evaluating a biological sample for biogenic amines which comprises making an ion mobility measurement & deriving from the ion mobility measurement a response such as required in the instant claims.
9. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or suggest an apparatus such as that instantly claimed where the first and second elaborator means is a LUT (table); the prior art does not teach or suggest an apparatus according to claim 11 wherein the comparative parameters or the measured parameters relate to a disease or pathological condition.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 571-272-1255. The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0661.

Monique T. Cole
Examiner
Art Unit 1743

MC MC


Jill Warden
Supervisory Patent Examiner
Technology Center 1700